

214023

May 10, 2005

Victoria Rutson
Chief, SEA
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

AB-6 (Sub No. 428X)

**Re: *The Burlington Northern and Santa Fe Railway Company
Abandonment between French, New Mexico and York Canyon, New
Mexico***

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Michael A. Smith
Senior Counsel
Direct 312.360.6724
Fax 312.360.6598
msmith@
freebornpeters.com

Dear Ms. Rutson:

On or after May 30, 2005, we are filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 36.90 miles of railroad line between Milepost 0.00 near French, New Mexico and Milepost 36.90 near York Canyon, New Mexico, which traverses through United States Postal ZIP Codes 87747, 87728 and 87740 in Colfax County, New Mexico. Attached are ten copies plus the original of the Environmental and Historic Report describing the proposed action and any expected environmental or historic effects, as well as a map of the affected area.

Chicago

Springfield

Sincerely,



Michael A. Smith

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
BNSF Railway Company Notice of Exemption
to Abandon Its Line of Railroad
Between BNSF M.P. 0.00 near French,
New Mexico and M.P. 36.90 near York Canyon,
New Mexico, in Colfax County, New Mexico

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Public Record

Docket No. AB-6
(Sub-No. 428X)

ENVIRONMENTAL REPORT

The following information is submitted to the Surface Transportation Board by The BNSF Railway Company (BNSF) in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Notice of Exemption for abandonment of its line between M.P. 0.00 near French, New Mexico and M.P. 36.90 near York Canyon, New Mexico, Colfax County, New Mexico, a total distance of 36.90 miles.

(1) Proposed action and Alternatives: Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

BNSF seeks to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

(2) Transportation system: Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed abandonment will have no affect on existing transportation systems or patterns as the line is out of service.

(3) Land Use:

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

BNSF believes that the proposed exemption will not be inconsistent with local or regional land use plans. The Colfax County Board of Commissioners were notified by letters dated August 23, 2004. See Exhibit B. As of the date of this report, the Colfax County Board of Commissioners has not responded directly to those inquiries.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agriculture land.

The proposed exemption should have no effect on prime farmland. The Natural Resources Conservation Service was notified by a letter dated August 23, 2004. See Exhibit C. As of the date of this report, the Natural Resources Conservation Service has not responded directly to that inquiry.

(iii) If any action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why.

BNSF does not know whether the right-of-way is suitable for alternative public uses. The Colfax County Board of Commissioners were

notified by letters dated August 23, 2004. See Exhibit B. As of the date of this report, the Colfax County Board of Commissioners has not responded directly to the inquiry. BNSF will provide the Board copies of any response it may receive.

(4) Energy:

(i) Describe the effect of the proposed action on transportation of energy.

There are no longer any economically recoverable coal resources along the line.

(ii) Describe the effect of the proposed action on recyclable commodities.

This abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as the line is out of service.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

This abandonment will not result in an increase or decrease in overall energy efficiency as the line is out of service.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy consumption and show the data and methodology used to arrive at the figure given.

There will be no diversions of traffic because the line is out of service.

(5) Air:

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No.

(B). An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% or 50 vehicles a day on any affected road segment as the line is out of service.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and from) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

(6) Noise: If any of the thresholds identified in item (5)(c) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 76 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

(7) Safety:

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad crossings).

This abandonment should have no adverse effect on health or public safety. There are 29 public crossings and 31 private crossings.

During salvage operations on the line, if any may be required, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety

practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills, and the likelihood of and accidental release of hazardous materials.

Abandonment will not result in transportation of hazardous materials.

(iii) If there are any known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

There is no evidence of known hazardous waste site or sites where there have been known hazardous materials spills on the right of way.

(8) Biological resources:

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

BNSF believes that the proposed exemption not affect endangered or threatened species or areas designated as critical habitat. According to the U.S. Fish and Wildlife, threatened and endangered species that are located in Colfax County include the Black-footed ferret (*Mustela nigripes*), the Southwestern willow flycatcher (*Empidonax traillii eximius*), the Bald eagle (*Haliaeetus leucocephalus*), the Mexican spotted owl (*Strix occidentalis lucida*), Piping plover (*Charadrius melodus*), and the Arkansas River shiner (*Notropis girardi*). See Exhibit D, letter from the U.S. Fish and Wildlife Service. The Department of Game and Fish does not anticipate significant impacts to wildlife or sensitive habitats. See Exhibit E, letter from the State of New Mexico Department of Game and Fish.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

BNSF believes that the proposed exemption will not affect wildlife sanctuaries or refuges, National or State parks or forests. There are no public (Bureau of Land Management) land along the stretch of railroad scheduled for abandonment. See Exhibit F, letter from the Bureau of Land Management. There are no state park facilities located within the project area. See Exhibit G, e-mail from the New Mexico State Parks.

(9) Water:

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

BNSF believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. The U.S. Environmental Protection Agency requires National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) coverage for storm water discharges from construction projects that will result in a disturbance (or re-disturbance) of one or more acres. A Storm Water Pollution Prevention Plan should be prepared and maintained both during and after construction to prevent pollutants in storm water run-off from entering waters of the U.S. See Exhibit H, letter from the State of New Mexico Environmental Department. BNSF will require its salvage contractors to take every measure and precaution to ensure that no pollutant will be discharged into surface waters.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year floodplains will be affected. Describe the effects.

BNSF believes that the proposed exemption will not require a Section 404 permit. The U.S. Army Corps of Engineers was notified by a letter dated August 23, 2004. See Exhibit I. As of the date of this report, the U.S. Army Corps of Engineers has not responded. BNSF will provide the Board copies of any response it may receive.

Some of the proposed abandonment lays in Zone A of the floodplain, which is in an area of 100-year flood. Further study would probably have to be made to determine if the proposed abandonment would affect the 100-year floodplain. See Exhibit J, letter from County of Colfax.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.

BNSF believes that Section 402 permits will not be required for the proposed action. An NPDES Construction General Permit (CGP) will be required if the proposed abandonment will disturb one or more acres of total land area. Since the project entails only removal of rails and ties with no disturbance of the roadbed, if the project disturbs less than one acre, then an NPDES permit is not required. See Exhibit H, letter from the New Mexico Environmental Department.

(10) Proposed Mitigation: Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michael Smith', with a horizontal line underneath.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: May 10, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
BNSF Railway Company Notice of Exemption
to Abandon Its Line of Railroad
Between BNSF M.P. 0.00 near French,
New Mexico and M.P. 36.90 near York Canyon,
New Mexico, in Colfax County, New Mexico

Docket No. AB-6
(Sub-No. 428X)

HISTORICAL REPORT

The following is submitted to the Surface Transportation Board by The BNSF Railway Company (BNSF) in accordance with the Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting the Board's environmental and historical assessment regarding BNSF's Notice of Exemption to abandon its line of railroad between M.P. 0.00 near French, New Mexico and M.P. 36.90 near York Canyon, New Mexico, in Colfax County, New Mexico, a total distance of 36.90 miles.

(1) A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of the railroad structures that are 50 years old or older and are part of the proposed action;

One copy of a U.S.G.S. Topographical map has been provided to the New Mexico State Historical Society and one copy is being provided to the Surface Transportation Board's Section of the Environmental Analysis upon filing of this Report.

(2) A written description of the right-of-way (including approximate widths, to the extent known) and the topography and urban and/or rural characteristics of the surrounding area:

The majority of the right of way of the French to York Canyon, New Mexico line varies from 150 to 200 feet in width. The right of way is rural in nature. There are no towns along the right of way, French, Colfax and York Canyon are railroad stations. York Canyon is the site of a coal mine which is no longer active. The line is located in Colfax county which has a 2003 population of 14,051 according to the New Mexico Department of Economic Development. Colfax county is comprised of 3,768 square miles and has a population density of approximately 4 people per square mile. The adjoining real estate varies from rangeland to hilly.

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

There are no bridges that are 50 years or older in the immediate area of the abandonment. There are nine culverts that are 50 years old or older. See Exhibit K.

(4) The date(s) of construction of the structures, and the date(s) and extent of any major alterations, to the extent such information is known;

The dates of construction of the culverts are included with the photographs. See Exhibit K.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

The Atchison Topeka and Santa Fe Railway (ATSF) acquired the right of way in 1965. In 1995 The ATSF merged with the Burlington Northern Railroad (BN) to become The Burlington Northern and Santa Fe Railway (BNSF). On January 20, 2005 The Burlington Northern and Santa Fe Railway changed its name to BNSF Railway.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is to be historic;

Documents in BNSF's possession concerning this abandonment may include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are available.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archaeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. Culverts and rail lines are potentially eligible under criterion A of the National Register for their association with mining in York Canyon. See Exhibit L, response from the New Mexico Historic Preservation Division.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archaeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael Smith', with a long horizontal flourish extending to the right.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: May 10, 2005

A

FRENCH - YORK CANYON, NEW MEXICO

YORK CANYON
MILEPOST 36.90

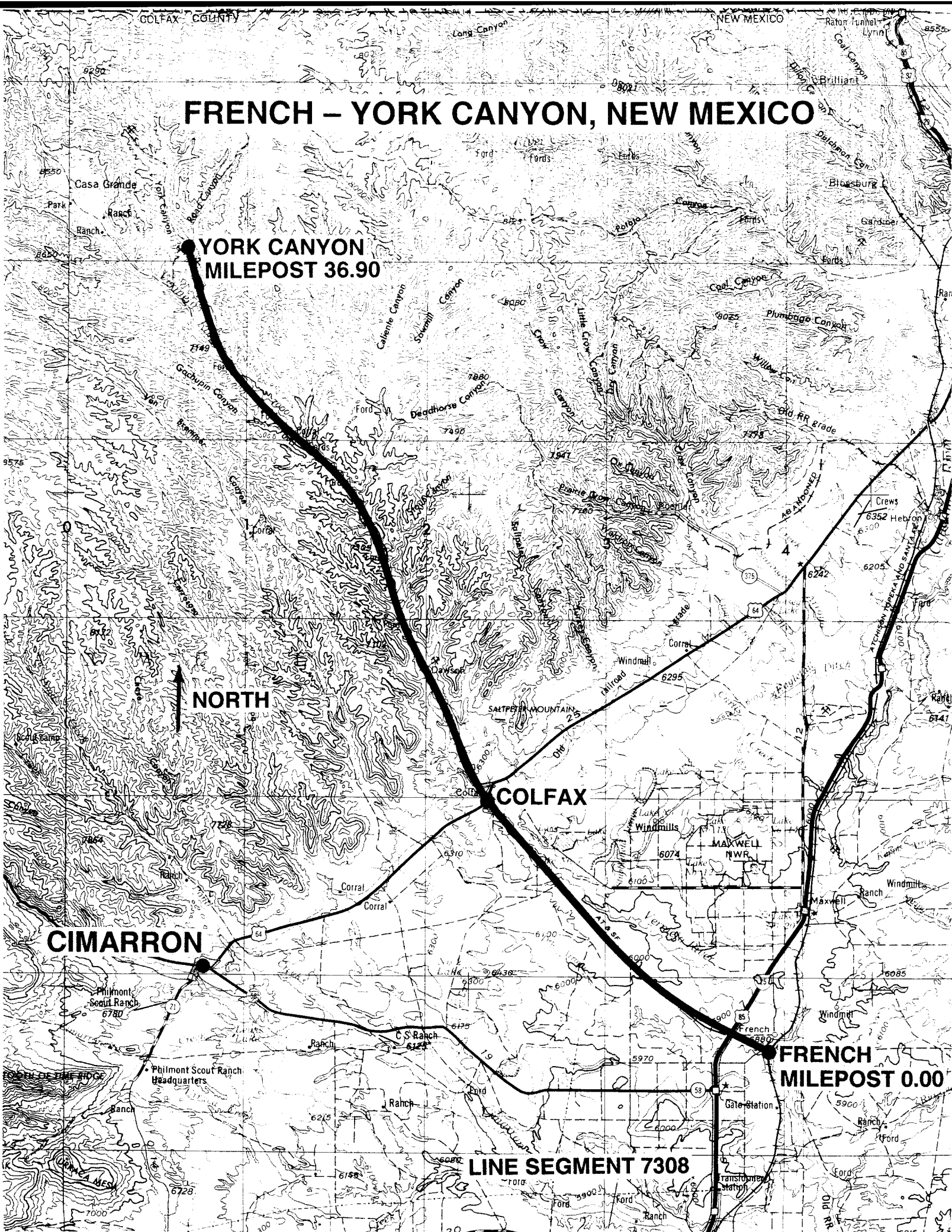
NORTH

COLFAX

CIMARRON

FRENCH
MILEPOST 0.00

LINE SEGMENT 7308



B

Freeborn & Peters LLP

August 23, 2004

Colfax County Board of Commissioners
P.O. Box 1498
County Courthouse
Raton, NM 87740-1498

Attorneys at Law

1 South Wacker Drive
Suite 3000
Chicago, Illinois
312.360.6677
312.360.6000

Brian Nettles
Legal
312.360.6336
312.360.6596
bnettl@freebornpeters.com

Chicago

Springfield

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
 between French, New Mexico and York Canyon, New Mexico***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 36.90 miles of railroad line between Milepost 0.00 near French, New Mexico and Milepost 36.90 near York Canyon, New Mexico.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by September 23, 2004. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

C

Freeborn & Peters LLP

August 23, 2004

Natural Resources Conservation Service
Raton Service Center
245 Park Ave
Raton, NM 87740-3800

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
between French, New Mexico and York Canyon, New Mexico***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 36.90 miles of railroad line between Milepost 0.00 near French, New Mexico and Milepost 36.90 near York Canyon, New Mexico.

As part of the environmental report BNSF needs to know whether or not the proposed abandonment will have any effect on prime agricultural lands.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

Please provide this information by September 23, 2004. Thank you for your cooperation.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

Attorneys at Law

1 South Wacker Drive
Suite 3000
Chicago, Illinois
606-6677
312.360.6000

Brian Nettles
Legal
312.360.6336
312.360.6596
bnettl@freebornpeters.com

Chicago

Springfield

D



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Mexico Ecological Services Field Office

2105 Osuna NE

Albuquerque, New Mexico 87113

Phone: (505) 346-2525 Fax: (505) 346-2542

September 10, 2004

Cons. # 2-22-04-I-0679

Mr. Brian Nettles
Freeborn & Peters LLP
311 South Warker Drive, Suite 3000
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

Thank you for your August 23, 2004, letter requesting input on the proposed abandonment of approximately 37 miles of railroad in Colfax County, New Mexico. The proposed abandonment would be located between French, New Mexico and York Canyon, New Mexico.

We have enclosed a current list of federally endangered, threatened, proposed, and candidate species, and species of concern that may be found in Colfax County, New Mexico.¹ Under the Endangered Species Act, as amended, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with us further. If your action area has suitable habitat for any of these species, we recommend that species-specific surveys be conducted during the flowering season for plants and at the appropriate time for wildlife to evaluate any possible project-related impacts. Please keep in mind that the scope of federally listed species compliance also includes any interrelated or interdependent project activities (e.g., equipment staging areas, or utility relocations) and any indirect or cumulative effects.

Candidates and species of concern have no legal protection under the Act and are included in this document for planning purposes only. We monitor the status of these species. If significant declines are detected, these species could potentially be listed as endangered or threatened. Therefore, actions that may contribute to their decline should be avoided. We recommend that candidates and species of concern be included in your surveys.

Under Executive Orders 11988 and 11990, Federal agencies are required to minimize the destruction, loss, or degradation of wetlands and floodplains, and preserve and enhance their natural and beneficial values. We recommend you contact the U.S. Army Corps of Engineers for permitting requirements under section 404 of the Clean Water Act if your proposed action could

¹ Additional information about these species is available on the Internet at <http://nmrareplants.unm.edu>, <http://nmnbp.unm.edu/bisonnm/bisonquery.php>, and <http://ifw2es.fws.gov/endangeredspecies>.

Mr. Brian Nettles

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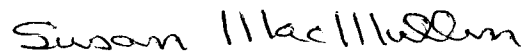
impact floodplains or wetlands. These habitats should be conserved through avoidance, or mitigated to ensure no net loss of wetlands function and value.

The Migratory Bird Treaty Act (MBTA) prohibits the taking of migratory birds, nests, and eggs, except as permitted by the U.S. Fish and Wildlife Service. To minimize the likelihood of adverse impacts to all birds protected under the MBTA, we recommend construction activities occur outside the general migratory bird nesting season of March through August, or that areas proposed for construction during the nesting season be surveyed, and when occupied, avoided until nesting is complete.

We suggest you contact the New Mexico Department of Game and Fish, and the New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division for information regarding fish, wildlife, and plants of State concern.

Thank you for your concern for endangered and threatened species and New Mexico's wildlife habitats. In future correspondence regarding this project, please refer to consultation # 2-22-04-I-0679. If you have any questions about the information in this letter, please contact Santiago R. Gonzales at the letterhead address or at (505) 761-4755.

Sincerely,



Susan MacMullin
Field Supervisor

Enclosure

cc: (w/o enc)

Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico

Director, New Mexico Energy, Minerals, and Natural Resources Department, Forestry
Division, Santa Fe, New Mexico

FEDERAL ENDANGERED, THREATENED,
PROPOSED, AND CANDIDATE SPECIES
AND SPECIES OF CONCERN WITHIN COUNTIES IN NEW MEXICO
Consultation Number 2-22-04-I-0679
September 10, 2004

Colfax County

ENDANGERED

- Black-footed ferret (*Mustela nigripes*)**
- Southwestern willow flycatcher (*Empidonax traillii extimus*)

THREATENED

- Bald eagle (*Haliaeetus leucocephalus*)
- Mexican spotted owl (*Strix occidentalis lucida*)
- Piping plover (*Charadrius melodus*)
- Arkansas River shiner (*Notropis girardi*)***

SPECIES OF CONCERN

- Black-tailed prairie dog (*Cynomys ludovicianus*)
- New Mexican meadow jumping mouse (*Zapus hudsonius luteus*)
- Swift fox (*Vulpes velox*)
- American peregrine falcon (*Falco peregrinus anatum*)
- Arctic peregrine falcon (*Falco peregrinus tundrius*)
- Baird's sparrow (*Ammodramus bairdii*)
- Black tern (*Chlidonias niger*)
- Mountain plover (*Charadrius montanus*)
- Northern goshawk (*Accipiter gentilis*)
- Western burrowing owl (*Athene cunicularia hypugea*)
- Yellow-billed cuckoo (*Coccyzus americanus*)
- Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*)
- Dwarf milkweed (*Asclepias uncialis* var. *uncialisa*)

Index

Endangered	=	Any species which is in danger of extinction throughout all or a significant portion of its range.
Threatened	=	Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.
Candidate	=	Candidate Species (taxa for which the Service has sufficient information to propose that they be added to list of endangered and threatened species, but the listing action has been precluded by other higher priority listing activities).
Proposed	=	any species of fish, wildlife or plant that is proposed in the Federal Register to be listed under section 4 of the Act.
Species of Concern	=	Taxa for which further biological research and field study are needed to resolve their conservation status <u>OR</u> are considered sensitive, rare, or declining on lists maintained by Natural Heritage Programs, State wildlife agencies, other Federal agencies, or professional/academic scientific societies. Species of Concern are included for planning purposes only.
*	=	Introduced population
**	=	Survey should be conducted if project involves impacts to prairie dog towns or complexes of 200-acres or more for the Gunnison's prairie dog (<i>Cynomys gunnisoni</i>) and/or 80-acres or more for any subspecies of Black-tailed prairie dog (<i>Cynomys ludovicianus</i>). A complex consists of two or more neighboring prairie dog towns within 4.3 miles (7 kilometers) of each other.
***	=	Extirpated in this county
†	=	May occur in this county from re-introductions in Colorado.

E

GOVERNOR
Bill Richardson



STATE OF NEW MEXICO
DEPARTMENT OF GAME & FISH

One Wildlife Way
PO Box 25112
Santa Fe, NM 87504

STATE GAME COMMISSION
Guy Riordan, Chairman
Albuquerque, NM

Alfredo Montoya, Vice-Chairman
Alcalde, NM

David Henderson
Santa Fe, NM

Jennifer Atchley Montoya
Las Cruces, NM

Peter Pino
Zia Pueblo, NM

Tom Arvas
Albuquerque, NM

Leo Sims
Hobbs, NM

DIRECTOR AND SECRETARY
TO THE COMMISSION
Bruce C. Thompson

Visit our website at www.gmfsh.state.nm.us
For basic information or to order free publications: 1-800-862-9310.

September 21, 2004

Brian Nettles
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606

Re: Burlington Northern and Santa Fe Railway Company Abandonment between French, New Mexico and York Canyon, New Mexico, NMGF No. 9574

Dear Mr. Nettles,

In response to your letter dated August 23, 2004, regarding the above referenced project, the Department of Game and Fish (Department) does not anticipate significant impacts to wildlife or sensitive habitats. For your information, we have enclosed a list of sensitive, threatened and endangered species that occur in Colfax County.

For more information on listed and other species of concern, contact the following sources:

1. Species Accounts: <http://fwie.fw.vt.edu/states/nm.htm>
2. Species Searches: <http://nrmnhp.unm.edu/bisonm/bisonquery.php>
3. New Mexico Wildlife of Concern by Counties List:
http://www.wildlife.state.nm.us/conservation/share_with_wildlife/documents/speciesofconcern.pdf
4. Habitat Handbook Project Guidelines:
http://wildlife.state.nm.us/conservation/habitat_handbook/index.htm
5. For custom, site-specific database searches on plants and wildlife. Go to Data then to Free On-Line Data and follow the directions go to: <http://nrmnhp.unm.edu>
6. New Mexico State Forestry Division (505-827-5830) or <http://nmrareplants.unm.edu/index.html> for state-listed plants
7. For the most current listing of federally listed species always check the U.S. Fish and Wildlife Service at (505-346-2525) or <http://ifw2es.fws.gov/EndangeredSpecies/lists/>.

Thank you for the opportunity to review and comment on your project. If you have any questions, please contact Scott Draney at (505) 758-8851 or sdraney@state.nm.us

Sincerely,

Janell Ward, Assistant Chief
Conservation Services Division

JW/sd

xc: Susan MacMullin, New Mexico Ecological Services, USFWS
Lief Ahlm, NE Area Operations Chief, NMGF
Scott Draney, NE Area Habitat Specialist, NMGF
Pat Snyder, Raton District Supervisor, NMGF

New Mexico Species of Concern - Colfax County

Page 1 of 2

Common Name.....	SCIENTIFIC NAME.....	FWS..	NM...	FS.	BLM..	NM...	FWS.
		ESA	WCA	R3	NM	Sen	SOC
Rio Grande Cutthroat Trout	Oncorhynchus clarki virginalis	-	-	S	-	S m	S
Rio Grande Chub	Gila pandora	-	-	-	-	S	-
Plains Minnow	Hybognathus placitus (Native Pop)	-	-	-	S	S	-
Suckermouth Minnow	Phenacobius mirabilis	-	T	S	-	-	-
Southern Redbelly Dace	Phoxinus erythrogaster	-	E	S	-	-	-
Flathead Chub	Platygobio gracilis	-	-	-	S	-	-
Northern Leopard Frog	Rana pipiens	-	-	S	-	-	-
Clark's Grebe	Aechmophorus clarkii	-	-	S	-	-	-
American Bittern	Botaurus lentiginosus	-	-	S	-	-	-
Great Egret	Ardea alba egretta	-	-	S	-	-	-
Snowy Egret	Egretta thula brewsteri	-	-	S	-	-	-
Green Heron	Butorides virescens	-	-	S	-	-	-
Black-crowned Night-Heron	Nycticorax nycticorax hoactli	-	-	S	-	-	-
White-faced Ibis	Plegadis chihi	-	-	S	S	-	-
Osprey	Pandion haliaetus carolinensis	-	-	S	-	-	-
Mississippi Kite	Ictinia mississippiensis	-	-	S	-	-	-
Bald Eagle	Haliaeetus leucocephalus	AD,T mg	T	S	-	-	-
Northern Goshawk	Accipiter gentilis	-	-	S	S	S	S
Swainson's Hawk	Buteo swainsoni	-	-	S	-	-	-
Ferruginous Hawk	Buteo regalis	-	-	S	S	-	-
American Peregrine Falcon	Falco peregrinus anatum	DM,m	T	S	-	-	S
White-tailed Ptarmigan	Lagopus leucurus altipetens	-	E	S	-	-	-
Sora	Porzana carolina	-	-	S	-	-	-
Western Snowy Plover	Charadrius alexandrinus nivosus	-	-	S	-	-	-
Piping Plover	Charadrius melodus circumcinctus	T g	E	-	-	-	-
Mountain Plover	Charadrius montanus	PT	-	S	-	S	-
Black-necked Stilt	Himantopus mexicanus	-	-	S	-	-	-
Long-billed Curlew	Numenius americanus americanus	-	-	S	-	-	-
Black Tern	Chlidonias niger surinamensis	-	-	-	S	-	S
Yellow-billed Cuckoo	Coccyzus americanus occidentalis	-	-	-	-	S	S
Burrowing Owl	Athene cunicularia hypugaea	-	-	-	S	-	S
Mexican Spotted Owl	Strix occidentalis lucida	T hmg	-	S	-	S	-
Boreal Owl	Aegolius funereus	-	T	S	-	-	-
Belted Kingfisher	Ceryle alcyon	-	-	S	-	-	-
Southwestern Willow Flycatcher	Empidonax traillii extimus	E h	E	S	-	-	-
Loggerhead Shrike	Lanius ludovicianus	-	-	-	S	S	-
Gray Catbird	Dumetella carolinensis ruficrissa	-	-	S	-	-	-
American Redstart	Setophaga ruticilla tricolora	-	-	S	-	-	-
Baird's Sparrow	Ammodramus bairdii	-	T	S	S	-	S
Little Brown Myotis Bat	Myotis lucifugus carissima	-	-	-	-	S	-
Long-legged Myotis Bat	Myotis volans interior	-	-	-	S	S	-
Fringed Myotis Bat	Myotis thysanodes thysanodes	-	-	-	S	S	-
Long-eared Myotis Bat	Myotis evotis evotis	-	-	-	S	S	-
Yellow-bellied Marmot	Marmota flaviventris	-	-	-	-	S	-
Black-tailed Prairie Dog	Cynomys ludovicianus ludovicianus	C m	-	-	-	S	-
Gunnison's Prairie Dog	Cynomys gunnisoni	-	-	-	-	S	-
Heather Vole	Phenacomys intermedius intermedius	-	-	-	-	S	-
Prairie Vole	Microtus ochrogaster haydenii	-	-	-	-	S	-
Swift Fox	Vulpes velox velox	-	-	S	-	S	S
Ringtail	Bassariscus astutus	-	-	-	-	S	-
American Marten	Martes americana origenes	-	T	S	-	-	-

New Mexico Species of Concern - Colfax County Page 2 of 2

Common Name.....	SCIENTIFIC NAME.....	FWS..	NM...	FS.	BLM..	NM...	FWS.
		ESA	WCA	R3	NM	Sen	SOC
Western Spotted Skunk	Spilogale gracilis	-	-	-	-	s	-
Rocky Mountain Bighorn Sheep	Ovis canadensis canadensis	-	-	s	-	m	-
Lake Fingernailclam	Musculium lacustre	-	T	s	-	-	-
Star Gyro Snail	Gyraulus crista	-	T	s	-	-	-

NATIVE SPECIES APPARENTLY NO LONGER OCCURRING IN COLFAX COUNTY

New Mexico Sharp-tailed Grouse	Tympanuchus phasianellus hueyi	(extinct, NM endemic)
Gray Wolf	Canis lupus	
Grizzly Bear	Ursus arctos	(extirpated from NM)
Black-footed Ferret	Mustela nigripes	(extirpated from NM)
Mink	Mustela vison energumenos	(extirpated from NM)
Jaguar	Panthera onca arizonensis	
American Bison	Bos bison	
New Mexico Fritillary Butterfly	Speyeria hydaspe conquista	

F



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Taos Field Office
226 Cruz Alta Road
Taos, New Mexico 87571
www.nm.blm.gov

IN REPLY REFER TO:

2000 (020)

NMSF 052464

September 16, 2004

Freeborn & Peters LLP

Brian Nettles

311 South Wacker Drive, Suite 3000

Chicago, IL 60606-6677

Dear Mr. Nettles:

In response to your letter dated August 23, 2004 regarding the Burlington Northern and Santa Fe Railway Company Abandonment between French, NM and York Canyon, NM, we have examined our maps and found there is not any public (Bureau of Land Management) land along the stretch of railroad scheduled for abandonment.

There is however a portion of the railroad that is located on BLM land in Ribera, NM which the BLM is interested in disposing of. The location of the subject parcel is at T. 13 N., R. 14 E., Sec. 10 and contains 16.25 acres. It has also come to our attention that the Railroad Company is authorizing placement of mobile homes within the right-of-way. This is not an authorized use under the right-of-way regulations. Please contact me at the above address or at 505-751-4708 to discuss the right-of-way further.

Sincerely,

Francina Martinez
Realty Specialist

G

Nettles, Brian

From: Gatterman, David [DGatterman@state.nm.us]
Sent: Tuesday, August 31, 2004 2:49 PM
To: Nettles, Brian
Subject: BNSF abandonment between French, NM and York Canyon, NM

Dear Mr. Nettles,

After reviewing the map showing the area of impact for the above mentioned project, we have determined that no State Park facilities exist within the project area.

If you have any further questions regarding NM State Park facilities in the area, please feel free to contact me by e-mail or by calling 505-476-3381.

Regards,
Dave Gatterman, PE
Parks Engineer
New Mexico State Parks

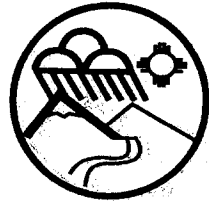
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H



BILL RICHARDSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Office of the Secretary
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone (505) 827-2855



RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

September 27, 2004

Brian Nettles
Freeborn & Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

**RE: THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
ABANDONMENT BETWEEN FRENCH AND YORK CANYON, NM**

The New Mexico Environment Department (NMED) staff reviewed the information on the above-referenced project included in your August 23, 2004 correspondence to the Department. The following comments are based on that information.

The U.S. Environmental Protection Agency (USEPA) requires National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) coverage for storm water discharges from construction projects (common plans of development) that will result in the disturbance (or re-disturbance) of one or more acres, including expansions, of total land area. Because this project may exceed one acre (including staging areas, etc.), it may require appropriate NPDES permit coverage prior to beginning construction (small, one - five acre, construction projects may be able to qualify for a waiver in lieu of permit coverage - see Appendix D). If, as stated in the referenced document, this project entails only removal of rails and ties with no disturbance of the roadbed, and the project otherwise disturbs less than one acre (e.g., access roads, etc.), then an NPDES permit is not required.

Among other things, this permit requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared for the site and that appropriate Best Management Practices (BMPs) be installed and maintained both during and after construction to prevent, to the extent practicable, pollutants (primarily sediment, oil & grease and construction materials from construction sites) in storm water runoff from entering waters of the U.S. This permit also requires that permanent stabilization measures (revegetation, paving, etc.), and permanent storm water management measures (storm water detention/retention structures, velocity dissipation devices, etc.) be implemented post construction to minimize, in the long term, pollutants in storm water runoff from entering these waters. In addition, permittees must ensure that there is no increase in sediment yield and flow

Brian Meeties
September 27, 2004
Page 2

velocity from the construction site (both during and after construction) compared to pre-construction, undisturbed conditions (see Subpart 9.C.1)

You should also be aware that EPA requires that all "operators" (see Appendix A) obtain NPDES permit coverage for construction projects. Generally, this means that at least two parties will require permit coverage. The owner/developer of this construction project who has operational control over project specifications (probably the BNSF Railway Company in this case), the general contractor who has day-to-day operational control of those activities at the site, which are necessary to ensure compliance with the storm water pollution plan and other permit conditions, and possibly other "operators" will require appropriate NPDES permit coverage for this project.

The CGP was re-issued effective July 1, 2003 (see **Federal Register/Vol. 68, No. 126/Tuesday, July 1, 2003** pg. 39087). The CGP, Notice of Intent (NOI), Fact Sheet, and Federal Register notice can be downloaded at: <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>

We appreciate the opportunity to comment on this project.

Sincerely,



Gedi Cibas, Ph.D.
Environmental Impact Review Coordinator
NMED File No. 1941ER

I

Freeborn & Peters LLP

August 23, 2004

U.S. Army Corps of Engineers
Albuquerque District
P.O. Box 1580
Albuquerque, NM 87103-1580

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
between French, New Mexico and York Canyon, New Mexico***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 36.90 miles of railroad line between Milepost 0.00 near French, New Mexico and Milepost 36.90 near York Canyon, New Mexico.

As part of the environmental report BNSF needs to know whether or not 404 permits are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

Attorneys at Law

1 South Wacker Drive
Suite 3000
Chicago, Illinois
606-6677
1312.360.6000

Brian Nettles
Attorney at Law
Direct 312.360.6336
Fax 312.360.6596
bnettl@freebornpeters.com

Chicago

Springfield

J

September 16, 2004

Brian Nettles
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677

Dear Brian:

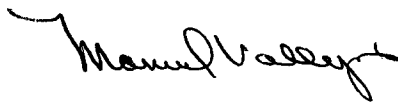
I have received your letter requesting floodplain information on the proposed abandonment of 36.90 miles of railroad line between Milepost 0.00 near French, New Mexico and Milepost 36.90 near York Canyon, New Mexico.

I am enclosing copies of Flood Insurance Rate Maps showing the designated floodplain in these areas of railroad line abandonment.

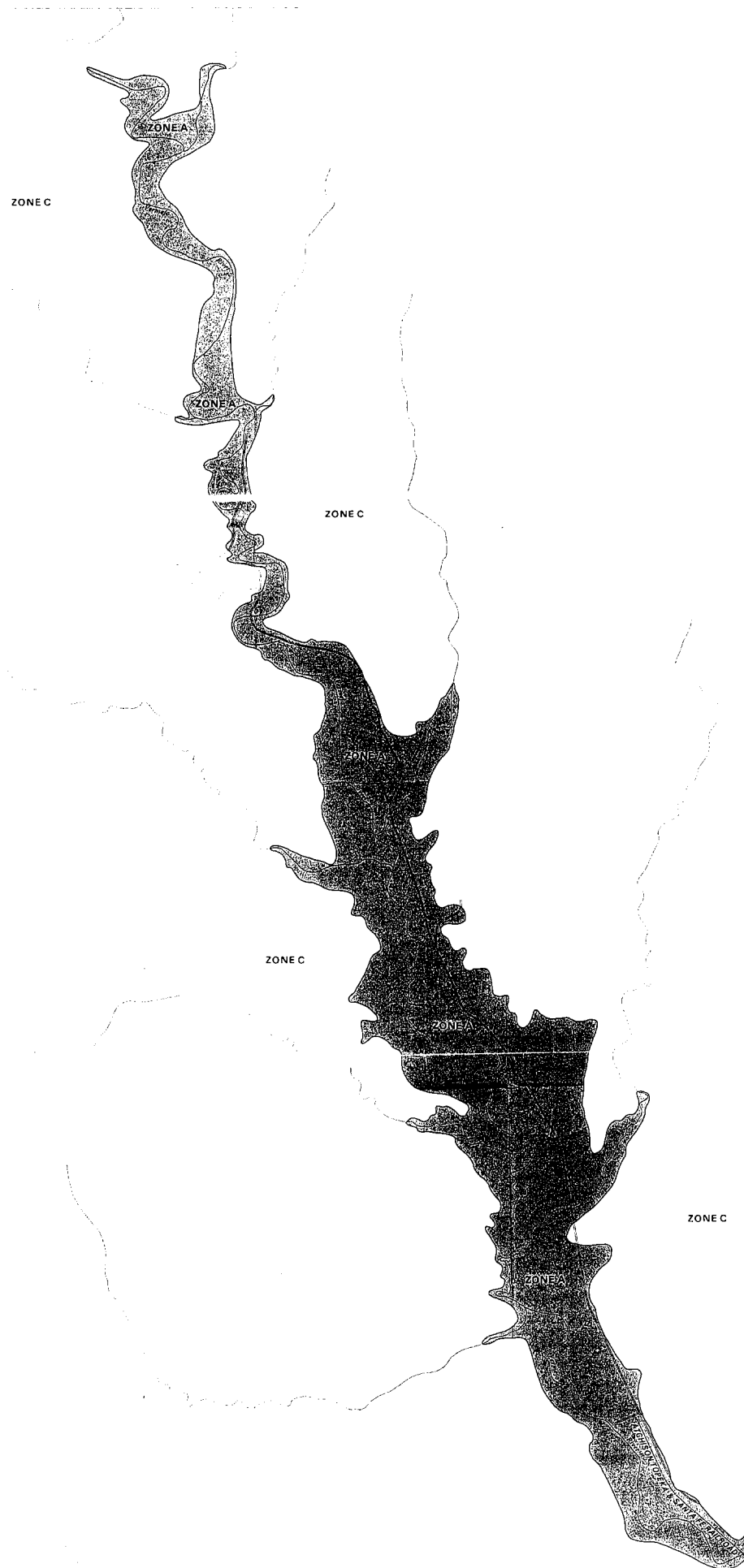
As you can see, some of the proposed abandonment lays in Zone A of the floodplain. Zone A is areas of 100-year flood: base elevations and flood hazard factors not determined. Further study would probably have to be made to determine if the proposed abandonment would affect the 100-year floodplain.

The rest of the railroad line lays in either Zone C, or Zone D which are designated as areas of minimal flooding and areas of undetermined, but possible, flood hazards.

Sincerely,

A handwritten signature in black ink, appearing to read "Manuel Vallejos", with a stylized flourish at the end.

Manuel Vallejos, CFM
Floodplain Manager
County of Colfax
116 S. 3rd St.
Raton, NM 87740



*350126 0250 A

*350126 0275 A

350126 0425 A

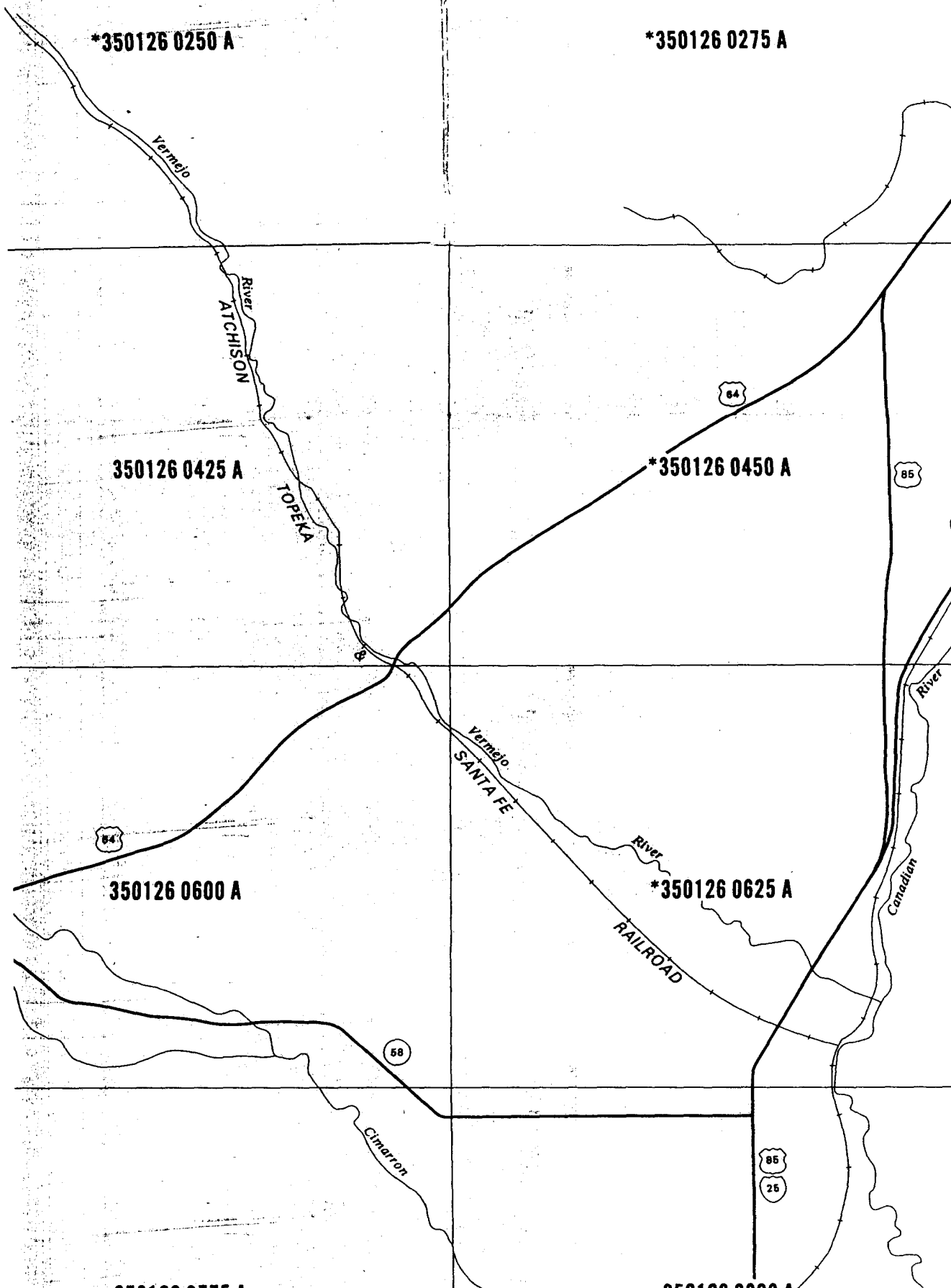
*350126 0450 A

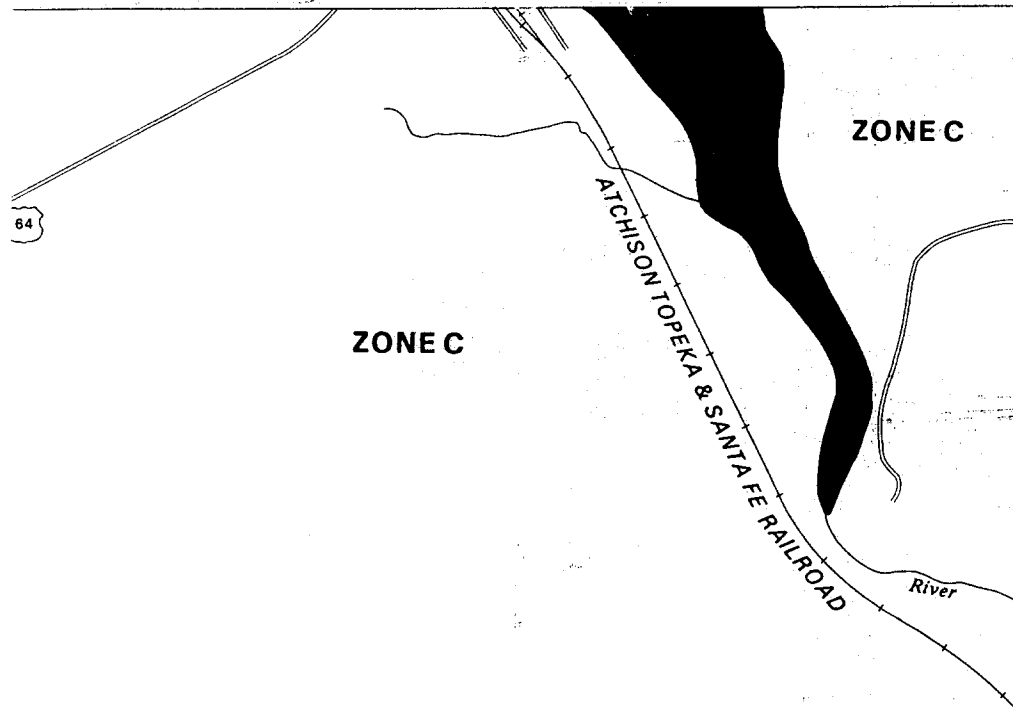
350126 0600 A

*350126 0625 A

350126 0775 A

350126 0800 A





K

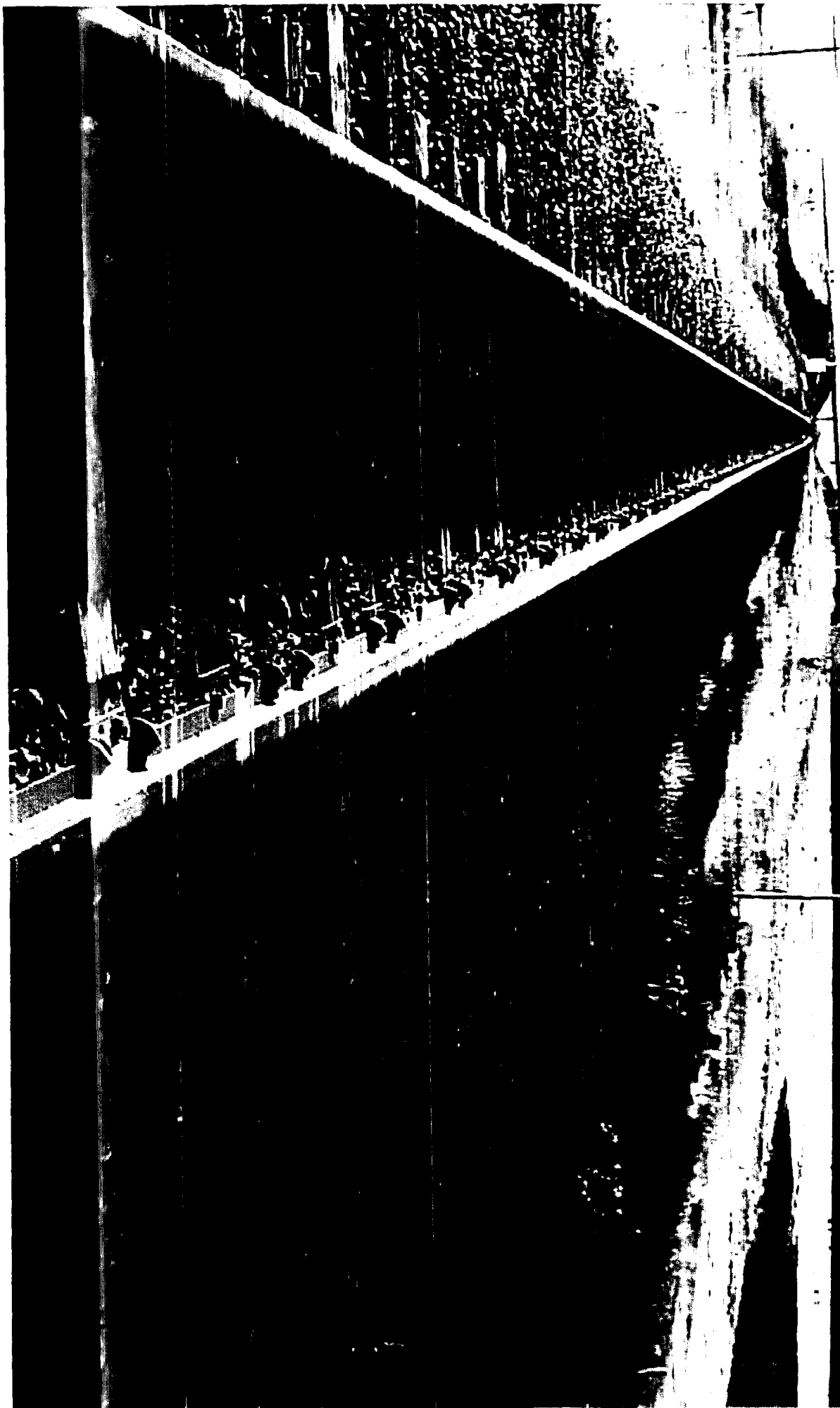
Abandonment Documentation (M.P. 0.00 to M.P. 36.90)

List of Culverts

Culvert:	1.3	Built: 1921	Length:	42. 0'	Height:	11.0'	Description: 8' x 11' x 42' CA
Culvert:	2.8	Built: 1911	Length:	28. 0'	Height:	14.0'	Description: 6' x 14' x 28' CA
Culvert:	7.8	Built: 1921	Length:	31. 0'	Height:	8.0'	Description: 9' x 8' x 31' CA
Culvert:	8.7	Built: 1910	Length:	50. 0'	Height:	12.0'	Description: 8' x 12' x 50' CA
Culvert:	10.3	Built: 1910	Length:	28. 0'	Height:	6.0'	Description: 10' x 6' x 28' CA
Culvert:	12.6	Built: 1910	Length:	35. 0'	Height:	5.0'	Description: 10' x 5' x 35' CA
Culvert:	14.5	Built: 1911	Length:	29. 0'	Height:	5.0'	Description: 10' x 5' x 29' C. Arch
Culvert:	16.5	Built: 1910	Length:	42. 0'	Height:	11.0'	Description: 11' x 42' CA
Culvert:	17.2	Built: 1910	Length:	42. 0'	Height:	9.0'	Description: 8' x 9' x 42' CA

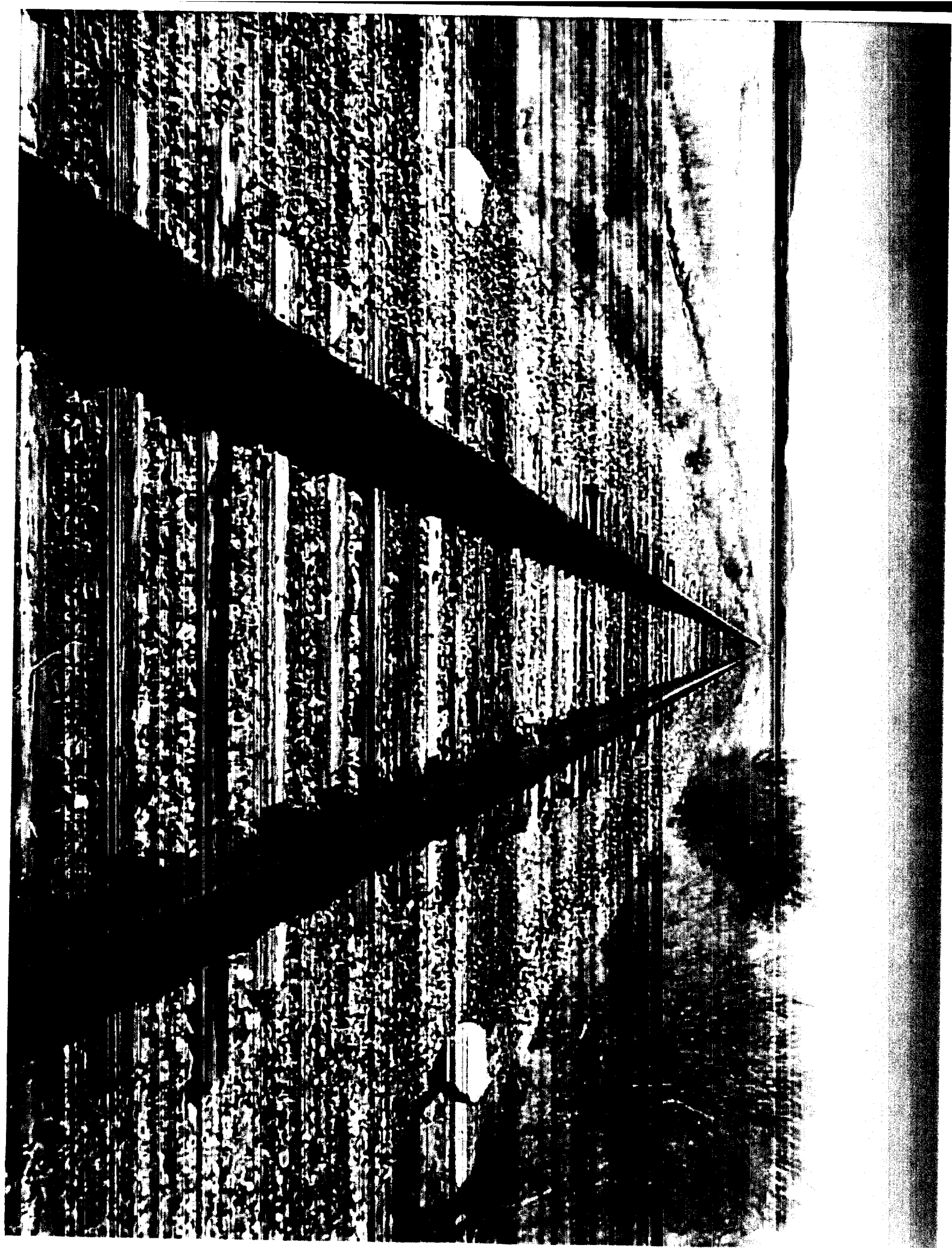




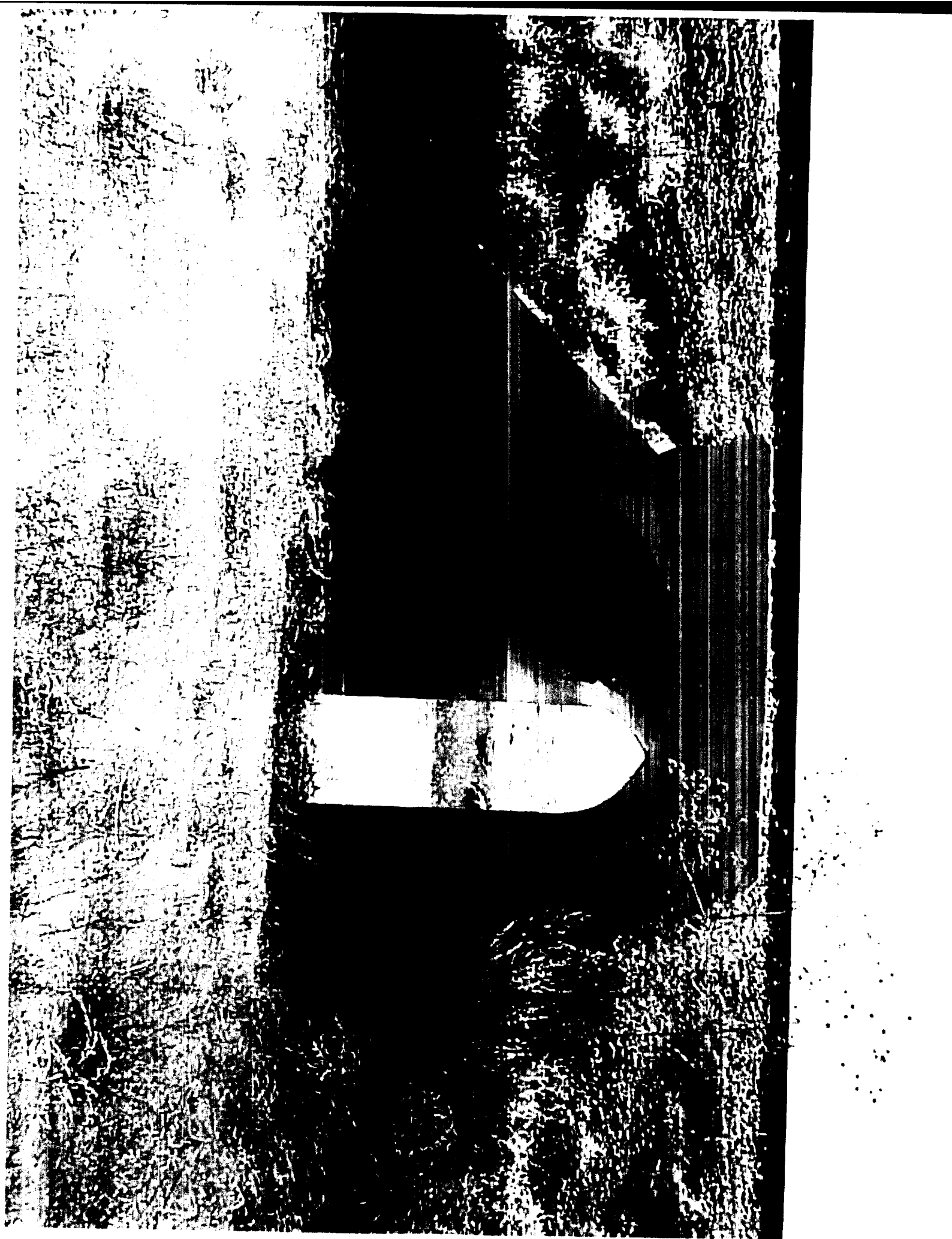


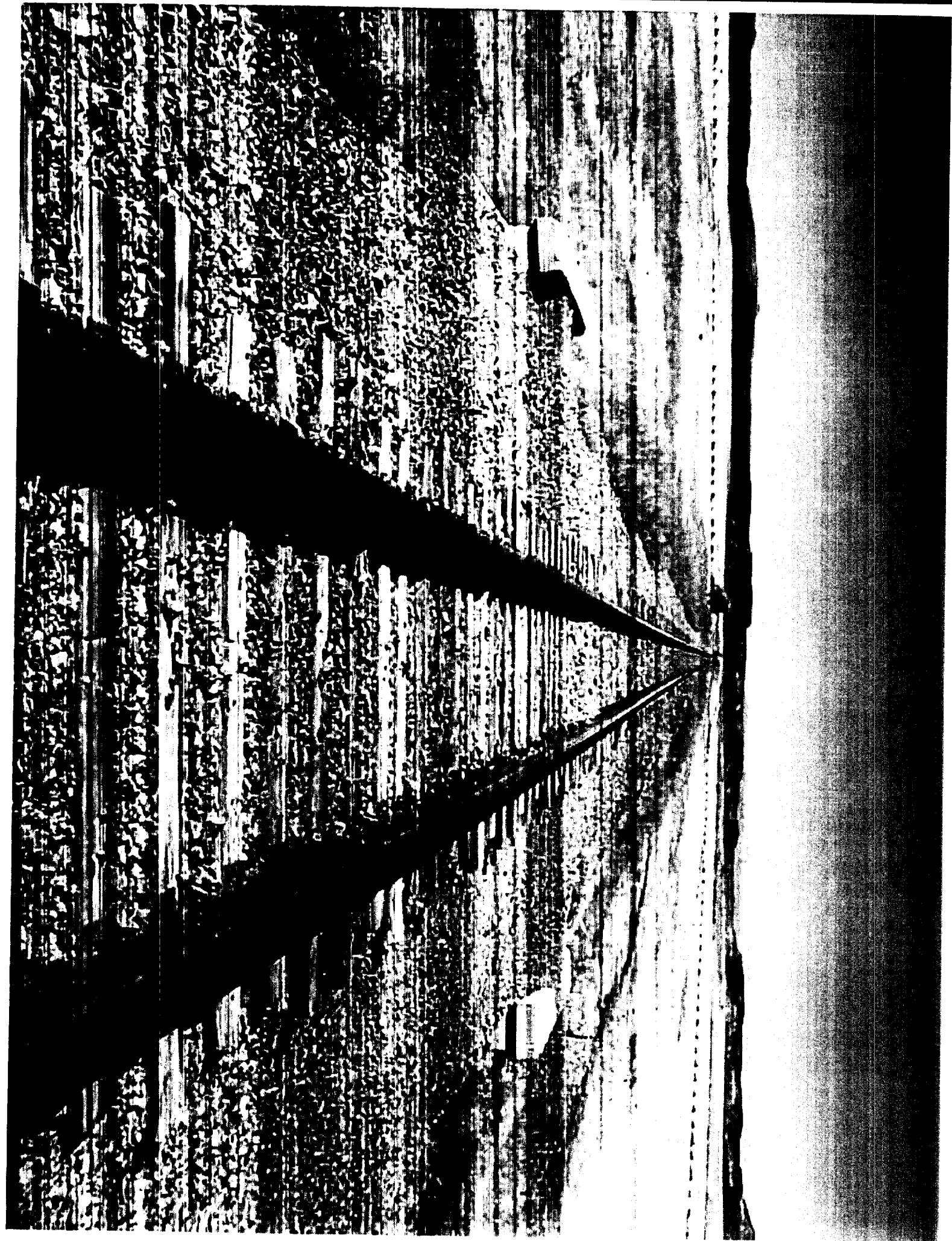








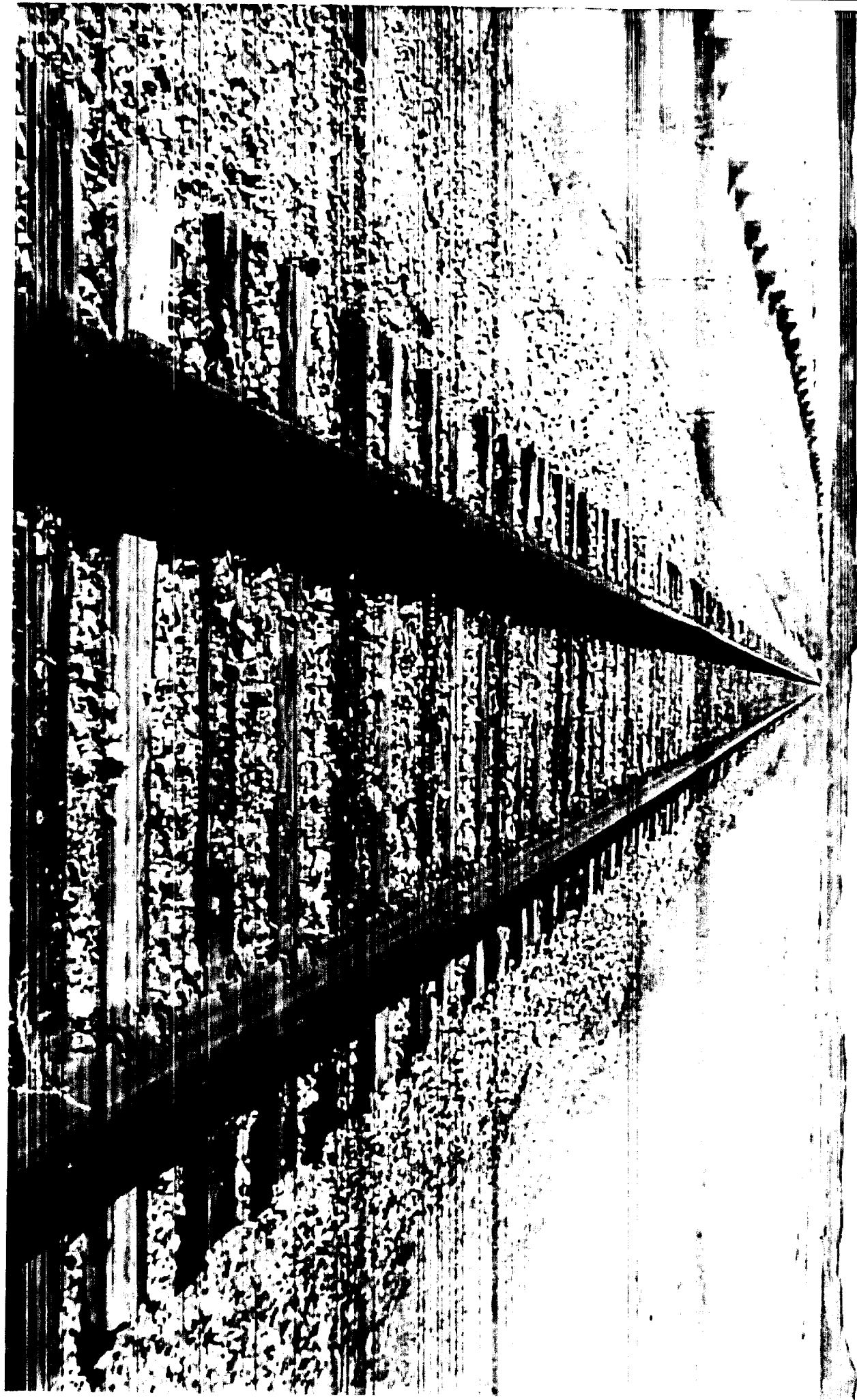




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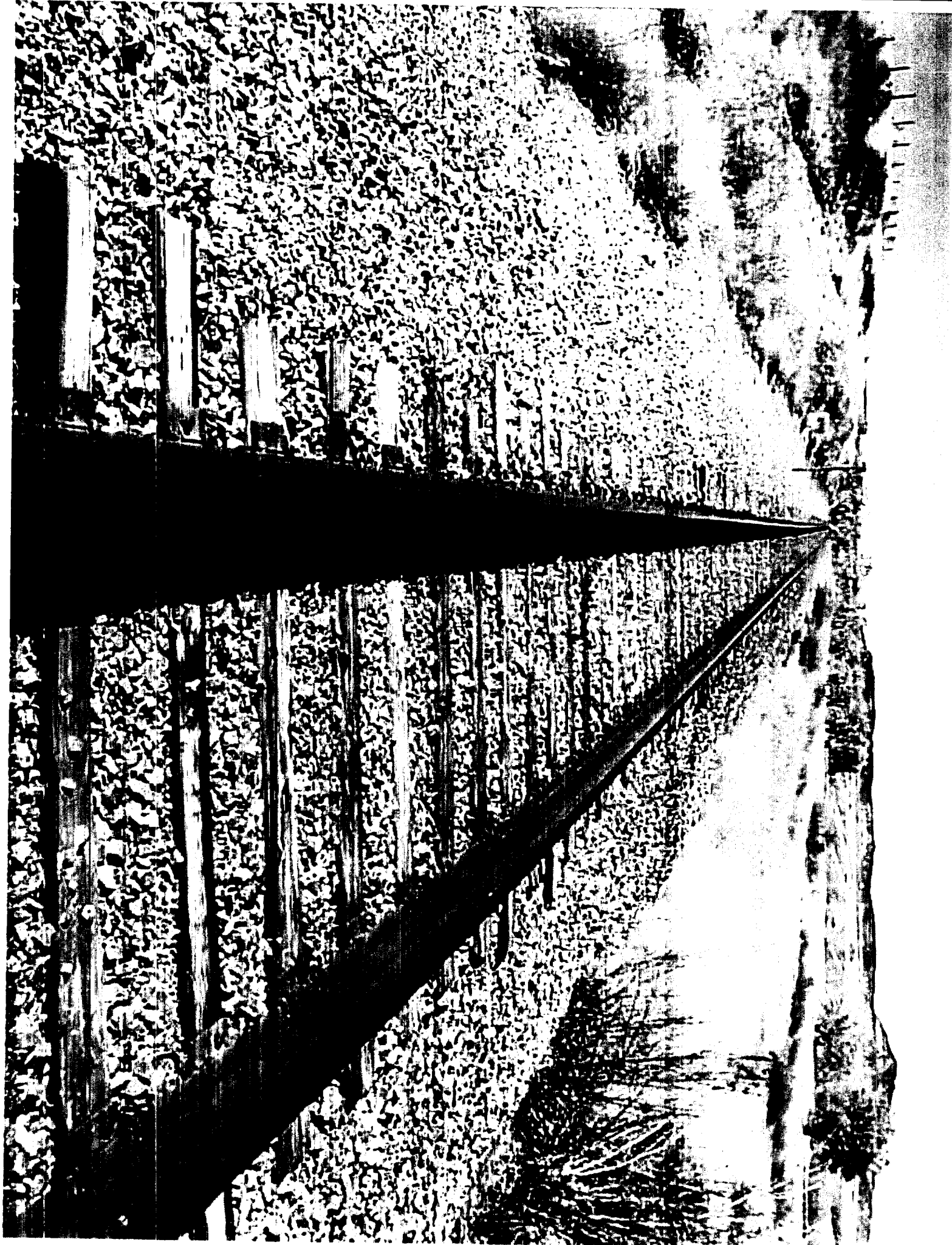




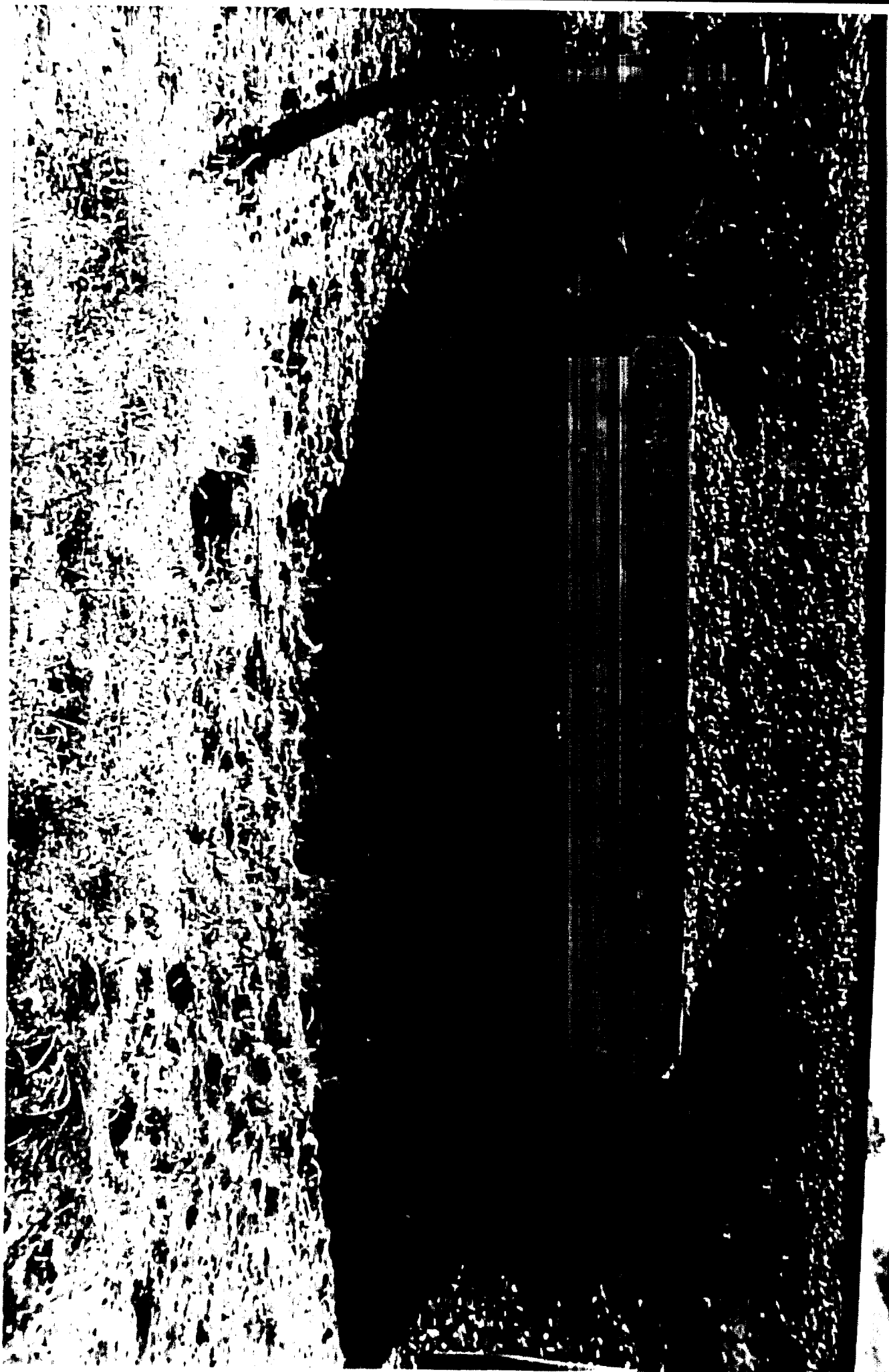


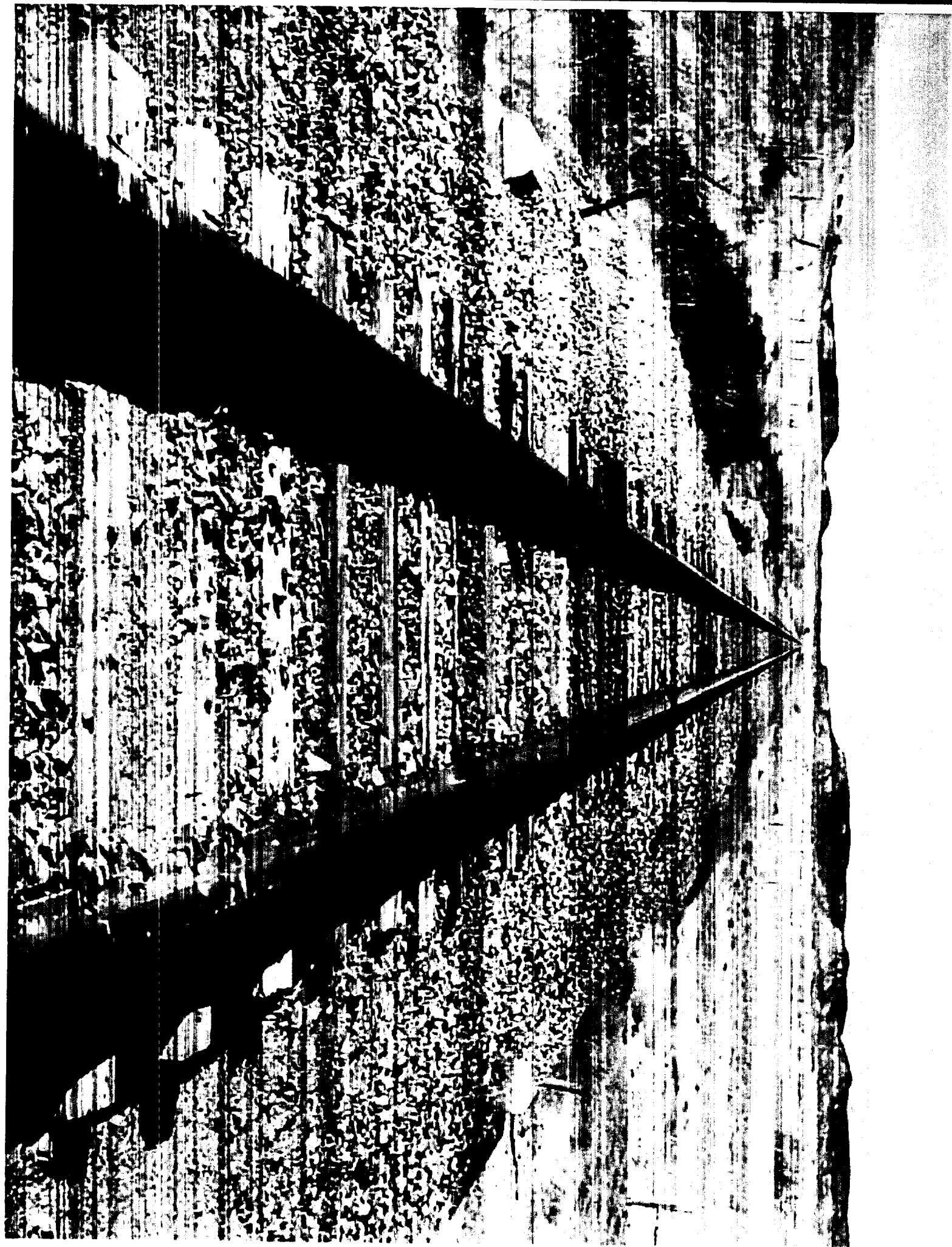
L.S. 7308
M.P. 10.3
YORK CANYON





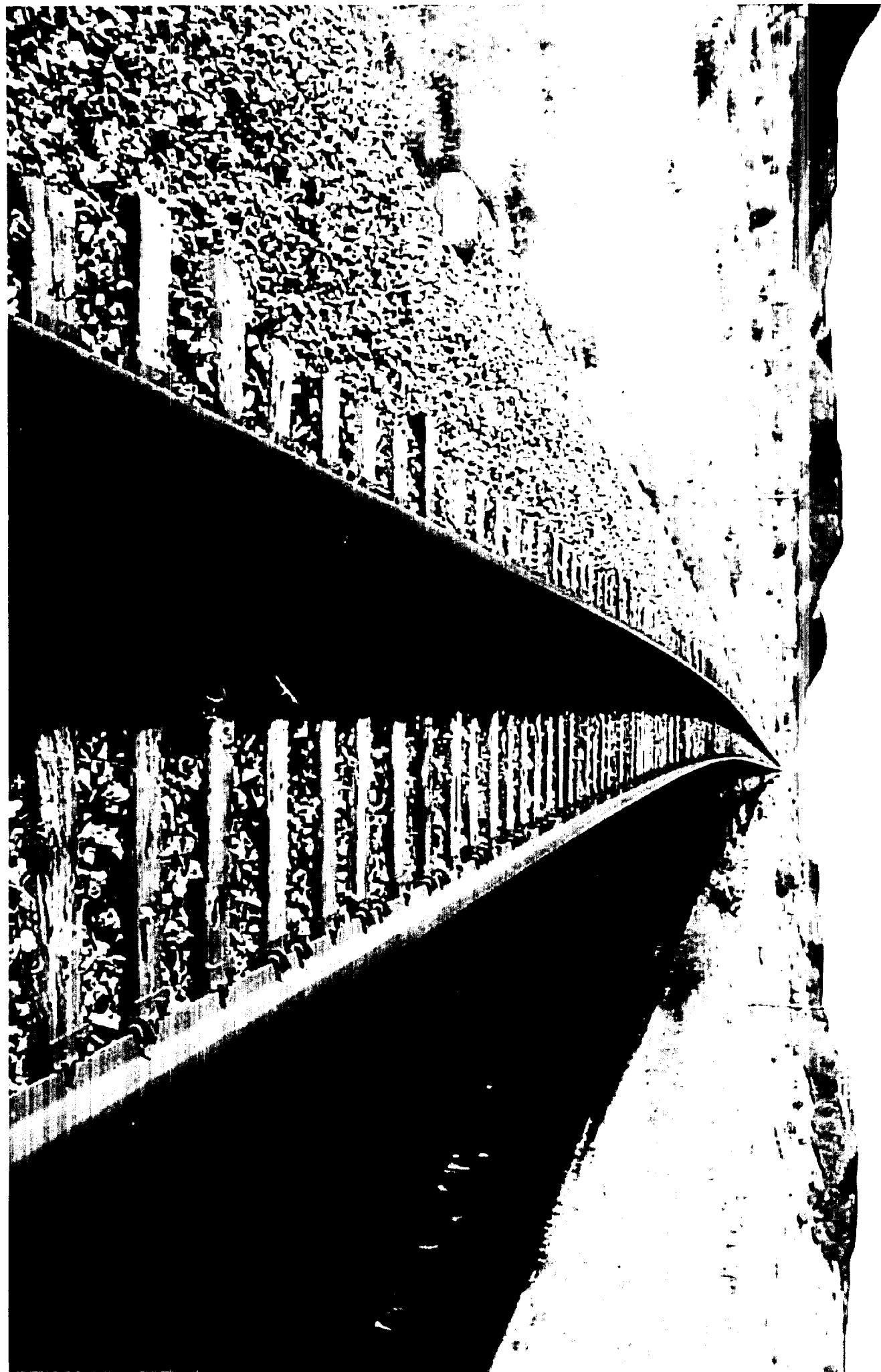






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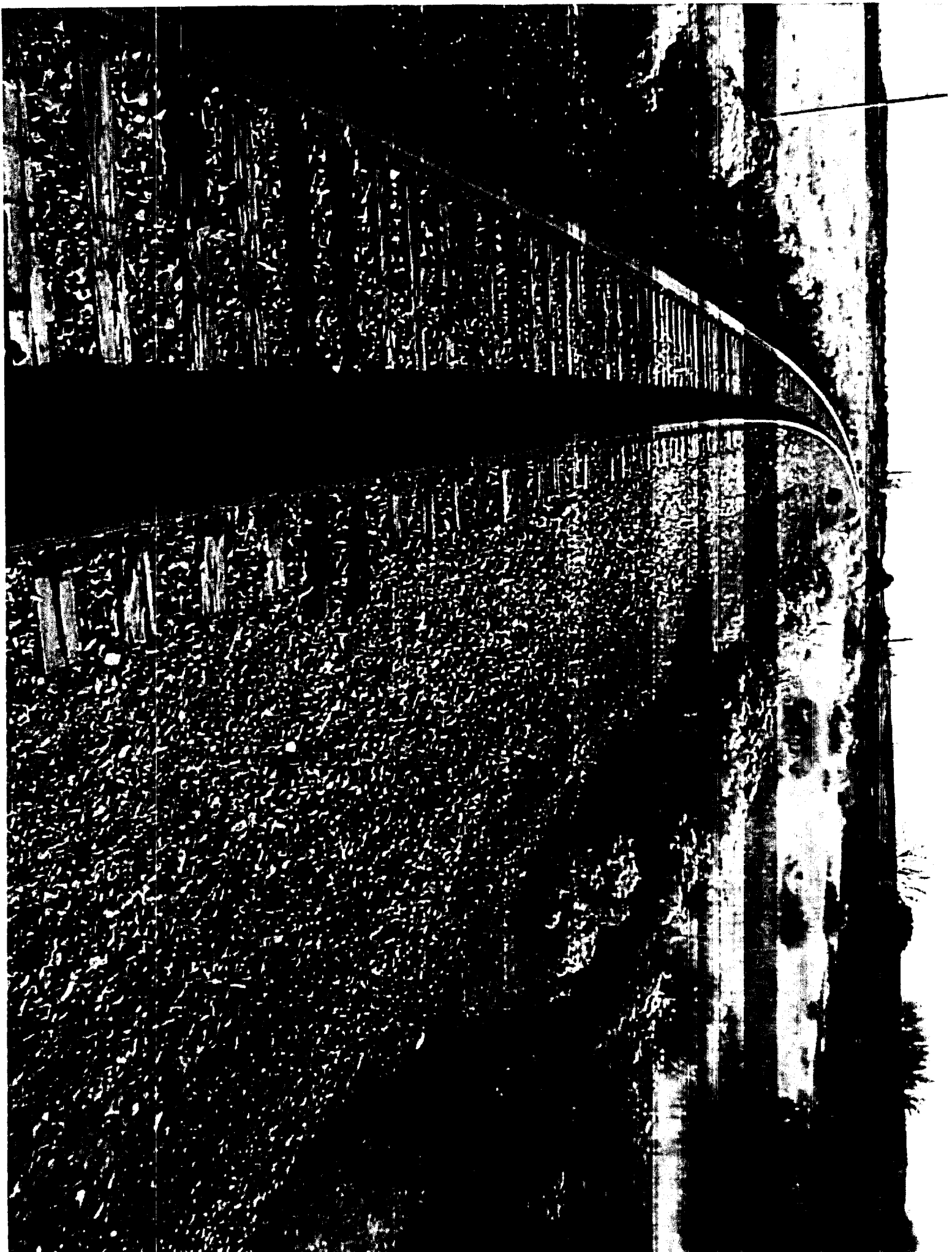




LS. 7308
MP 16.5
YORK CANYON



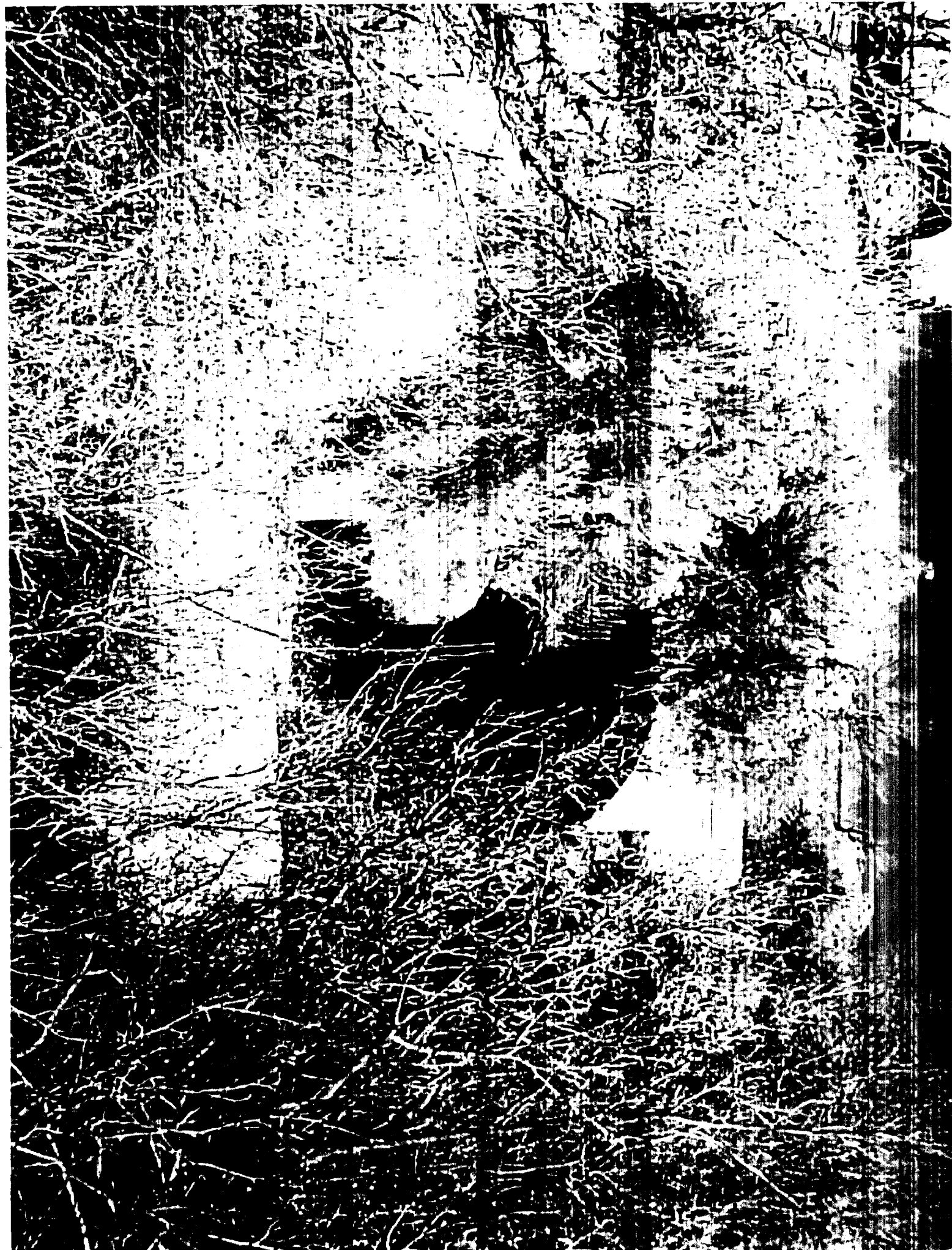




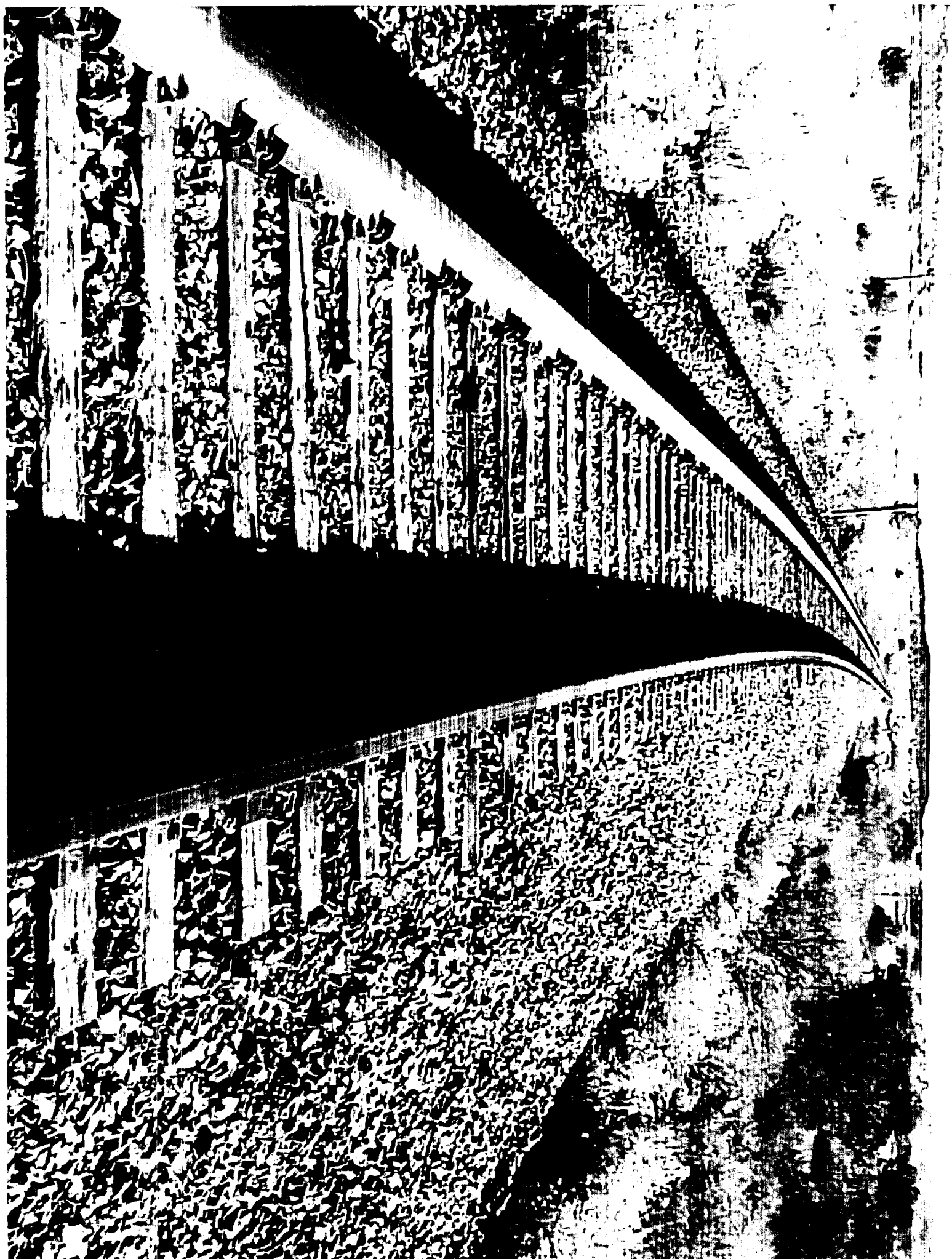
L.S. 7308

M.P. 17.2

YORK CANYON







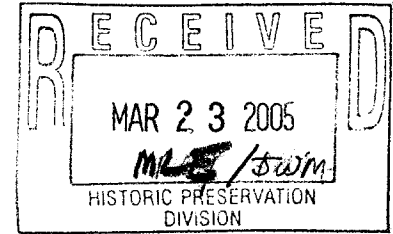
L

Freeborn & Peters LLP

March 22, 2005

073872

Katherine Slick
State Historic Preservation Officer
New Mexico Historic Preservation Division
228 East Palace Avenue, Room 320
Santa Fe, New Mexico, 87501



**Re: The Burlington Northern and Santa Fe Railway Company Abandonment
between French, New Mexico and York Canyon, New Mexico**

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Dear Ms. Slick:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 36.90 miles of railroad line between Milepost 0.00 near French, New Mexico and Milepost 36.90 near York Canyon, New Mexico.

As part of the historic report required by the Surface Transportation Board, BNSF needs to know if there are any structures eligible for listing on the National Register of Historic Places and also if there are archaeological resources in the project area.

There are no buildings or bridges that are 50 years old or older along the proposed abandonment. The only structures that are 50 years old or older are nine culverts. Photographs of the nine culverts are enclosed. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Your early response will be greatly appreciated.

Sincerely,

Brian Nettles

/bn
Enclosures

COMMENTS

04/29/05

for NM State Historic Preservation Officer

* culverts and rail line are potentially eligible under Criterion A of the National Register for their association with mining in York Canyon.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2005, the foregoing Petition for Reconsideration was served via first-class mail on the following parties of record to correct an apparent deficiency in the Sierra Club's filing dated April 4, 2005:

Allen, Jr, E. A.
Industrial Resources Group, Inc.
2034 Greenbrier Drive
Collinsville, IL 62234service list

Bierlein, Lawrence W
McCarthy Sweeney & Harkaway Pc
2175 K Street NW
Washington, DC 20037

Brown, Corrine
U.S. House of Representatives
2444 Rayburn House Office Bldg.
Washington, DC 20515

Comer, Edward H
Edison Electric Institute
701 Pennsylvania Ave NW 4Th Fl
Washington, DC 20004-2696

Compton, Key D
Southern States Chemical Inc
P. O. Box 546
Savannah, GA 31402

Davis, Honorable Tom
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Devore, Dean W
Laroche Industries Inc
1100 Johnson Ferry Road NE
Atlanta, GA 30342-1708

DiMichael, Nicholas J
Thompson Hine LLP
1920 N Street, N.W. Suite 800
Washington, DC 20036

Doruff, Mark
Council On Radionuclides And
Radiopharmaceuticals
3911 Campolindo Drive
Moraga, CA 94556-1551

Elhakim, Diane
P. O. Box 677
Parsipanny, NJ 07054-0677

Ferrara, Jerry
Celanese Chemicals
1601 W. LBJ Freeway
Dallas, TX - Texas | TX 75234

Gilley, Michael D
Chlor Alkali Products
490 Stuart Road NE
Cleveland, TN - 37312

Gitomer, Louis E
Ball Janik LLP
1455 F Street NW Suite 225
Washington, DC 20005

Hynes, Terence M.
Sidley Austin Brown & Wood, LLP
1501 K Street NW
Washington, DC 20005

Jenkins Iii, Robert M
Mayer Brown Rowe & Maw
1909 K Street, NW
Washington, Dc, 20006-1101

Love, Richard
District Of Columbia
441 Fourth Street, N.W., 6Th Floor South
Washington, DC 20001

Masterman, Peter H.
Nova Chemicals Inc.
1550 Coraopolis Heights Road
Moon Township, PA 15108

McGregor, David J
BASF Corporation
100 Campus Drive
Florham Park, NJ 07932

McIntosh, John
Cjlor Alkali Products
490 Stuart Road NE
Cleveland, TN 37312

Moates, G Paul
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, DC 20005

Morell, Karl
Ball Janik LLP
1455 F Street NW Suite 225
Washington, DC 20005

Mugica, Fernando A
One Salem Lake Drive
Long Grove, IL 60047

Mullins, William A
Baker & Miller PLLC
2401 Pennsylvania Ave, NW-Suite 300
Washington, DC 20037

Naasz, Kraig R
The Fertilizer Institute
Union Center Plaza 820 First Street NE
Suite 403
Washington, DC 2002

Phelleps, Moya F
National Mining Association
101 Constitution Avenue NW
Washington, DC 20001

Register, R G
R W Griffin Feed, Seed & Fertilizer Inc
P O Box 1350
Douglas, GA 31534

Rolak, Chet
Jones-Hamilton Co
30354 Tracy Road
Walbridge, OH 43465-9792

Rosen, Jeffrey A
U S Department Of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Saindon, Andrew J.
District Of Columbia
441 Fourth Street, N.W., 6Th Floor South
Washington, DC 20001

Schick, Thomas E
American Chemistry Council
1300 Wilson Boulevard
Arlington, VA 22209

Simpson, Thomas D
Railway Supply Institute Inc
50 F Street NW Suite 7030
Washington, DC 22001

Strasma, Greg
DSM Chemicals North America, Inc.
P. O. Box 2451
Augusta, GA 30903

Utiger, Robert
District Of Columbia
441 Fourth Street, N.W., 6Th Floor South
Washington, DC 20001

Weber, Harold H.
The Sulphur Institute
1140 Connecticut Avenue, NW, Suite 612
Washington, DC 20036

James R. Wrathall, Jr.
James R. Wrathall